IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 21.10.2005

Coram:

The Hon'ble Mr. Justice N.KANNADASAN

W.P.No.17643 of 1997

G.Babu .. Petitioner

vs.

1.The Director General
Railway Protection Force,
Rail Bhavan,
Rafi Ahmed Kidwai Marg,
New Delhi - 110 002.

2.The Chief Security Commissioner,
Railway Protection Force,
Southern Railway,
Moore Market Complex,
6th Floor,
Chennai - 600 003.

3.The Divisional Security Commissioner,
Railway Protection Force,
Southern Railway,
Moore Market Complex,
Chennai - 600 003. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for the issue of a Writ of Certiorarified Mandamus, calling for the records of the second respondent in Order No.M/XP-227/28/93 dated 2.9.1993 as confirmed by the order of the fifth respondent in proceedings No.X/P-227-1099 dated 11.8.1995, quash the same and direct the respondents to reinstate the petitioner in service from 2.9.1993 onwards with all consequential benefits.

For Petitioner : Mr.Vijay Narayan, Senior Counsel for Mr.R.Parthiban

For Respondents : Mr.R.Thiagarajan, Senior Counsel for Mr.V.G.Sureshkumar

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JUDGMENT

The above writ petition is filed for the relief as stated therein.

2. The petitioner has entered into the services of the Railway Protection Force in the year 1976. While he was working as a Constable, on 29.6.1992 a charge was framed against him relating to claim made by the petitioner in respect of his travelling allowance. According to the petitioner, on 18.7.1992, while he was on duty at about 11.00 A.M., the Assistant Security Commissioner by name Shri Edgar Fernandez visited the place of duty and took the petitioner to the lonely place for a secret conversation and directed the petitioner to meet him during the rest time. As per his directions, the petitioner met the Assistant Security Commissioner on 21.7.1992, during which time, the petitioner was promised that the said Officer would help him in the disciplinary proceedings and also would ensure that he would get further promotion as a Driver, for which a sum of Rs.15,000/- was demanded, which was later on reduced to Rs.10,000/-. Subsequently, the petitioner had chosen to make a complaint to the Director General of Railway Protection Force viz., the first respondent herein, about the demand made by the said Shri Edgar Fernandez. Consequently, the first respondent has directed the Chief Security Commissioner to make enquiries on the allegations made in the complaint of the petitioner and accordingly an enquiry was conducted and a report was arrived at that the said complaint is a frivolous one. On the basis of the said report, a charge sheet was issued to the petitioner on 15.12.1992 to the effect that the petitioner had submitted a false complaint to the first respondent making allegations against Shri Edgar Fernandez and thereby the petitioner had committed an act of grossly insubordinate or insolent to his higher Officer which is punishable under Section 9(1) of the Railway Protection Force Act. Consequent to the said charges, an Enquiry Officer was appointed who submitted a report after conducting an enquiry. The third respondent, by order dated 2.9.1993, has passed an order of punishment of dismissal from service which was confirmed by the appellate authority viz., the second respondent by proceedings dated 11.8.1995. Aggrieved against the said orders, the above writ petition is filed.

3. The respondents resisted the above writ petition by contending that there is no procedural irregularity on the part of the disciplinary authority while passing an order of dismissal and the finding is arrived at by considering the oral and documentary evidences available on record. It is also contended that the appellate authority also confirmed the order of the disciplinary authority and the order of punishment does not suffer from any infirmity or irregularity.

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4. The learned senior counsel appearing for the petitioner contended that a careful perusal of the oral evidence adduced by the witnesses disclose that the complaint preferred by the petitioner cannot be termed as a frivolous complaint and as such, the findings of the disciplinary authority as well as the appellate authority are perverse and liable to be set aside. Learned senior counsel further contended that there is no necessity on the part of the petitioner to make a complaint of this nature as against the higher authority risking his very employment and as such, the allegation to the effect that the higher Officer had claimed the said amount as bribe ought to have been accepted as a true one. It is also contended that the petitioner has not committed any irregularity during his entire tenure of service from the date of his appointment viz., 1976 and for the first time he was served with the charge memo for a false claim made in respect of travelling allowance which is pertaining to a magre amount and in the course of the proceedings initiated in respect of the said charges, the incident of demand of bribe took place for which the authorities ought not to have imposed a major penalty of dismissal. He also contended that the authorities have failed to apply their mind while awarding the punishment of dismissal considering the nature of the charges in support of which the witnesses tendered evidence as set out in the complaint and accordingly seeks the relief.

5. Per contra, learned senior counsel for the respondents contended that inasmuch as a finding is arrived at by the disciplinary authority only after careful examination of the entire evidence on record viz., the oral and documentary and an order of dismissal was passed, which was later on affirmed by the appellate authority, this Court in exercise of its powers conferred under Article 226 of the Constitution is not entitled to reappreciate the entire evidence on record and to come to a contrary conclusion. Learned senior counsel also contended that the authorities have followed the rules and regulations meticulously while conducting the disciplinary proceedings and finally came to the conclusion that the charges were proved and as such, the order of dismissal cannot be interfered with.

6. As regards the quantum of punishment is concerned, he contended that the authorities have rightly awarded the said punishment considering the fact that the petitioner is employed in a disciplined Force and such allegations have to be viewed seriously. Learned senior counsel further contended that the relief as claimed in the writ petition cannot be granted and at any rate, if such a relief is granted, the respondents are bound to pay huge amount by way of backwages to the petitioner which would amount to grant of premium to the person like the petitioner who made reckless allegation.

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7. I have considered the rival contentions of the learned senior counsels appearing on either side.

8. A perusal of the relevant materials disclose that the third respondent while passing final order of dismissal, has followed all the procedures which is expected to be followed in a disciplinary case of this nature and a conclusion is arrived at. Admittedly, there was a preliminary investigation on receipt of the complaint made by the petitioner and it is only thereafter, the charges were framed and an Enquiry officer was appointed and the petitioner was given due and adequate opportunity to adduce all evidence including oral evidence. The Enquiry Officer has submitted a report after analysing all the materials on record and subsequently the disciplinary authority viz., the third respondent has passed an order of dismissal by considering the entire materials on record.

9. Even though the learned senior counsel has drawn my attention about the nature of evidence adduced by the witnesses to substantiate that the disciplinary authority has not arrived at a correct conclusion, this Court has to bear in mind that while exercising its jurisdiction under Article 226 of the Constitution, the High Court does not act as an appellate authority. Its jurisdiction is circumscribed by limits of judicial review to correct the errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. Judicial review is not akin to adjudication of the case on merits as an appellate authority. The above view is supported by the principles of the Apex Court in its decision in Lalit Popli vs. Canara Bank and Others (2003 (3) SCC 583).

10. Similarly, the Apex Court in its decision in B.C.Chaturvedi vs. Union of India (1995 (6) SCC 749) held that the scope of judicial review is limited only to the extent of decision making process and when the findings of the disciplinary authority are based on some evidence, the Court cannot reappreciate its evidence and substitute its own findings. A similar view is taken subsequently by the Apex Court in its decision in R.S.Saini vs. State of Punjab (1999 (8) SCC 90).

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11. In the light of the above principles, I do not see any reason to interfere with the findings of the disciplinary authority wherein it is held that the petitioner is guilty of the charges.

12. As regards the next contention viz., the quantum of punishment is concerned, it is pertinent to refer to the specific ground urged by the petitioner in the appeal submitted before the first respondent which reads as follows:-

"that the penalty imposed on me is too heavy

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> and beyond all cannons of justice and is disproportionate and cannot be implemented against me and deserves to be vacated and set aside."

The above passage is set out as a preamble in the memorandum of appeal submitted by the petitioner to the Chief Security Commissioner viz., the second respondent herein. Apart from the above said specific ground urged in the appeal, the petitioner has chosen to raise several grounds attacking the order of the third respondent. A perusal of the order of the appellate authority dated 11.8.1995 discloses that the various grounds of attack in the appeal was not at all dealt with including the quantum of punishment. In fact, the second respondent who is an appellate authority constituted under the statute is expected to deal with all the grounds urged in the appeal. The order of the appellate authority per se discloses that the petitioner was deprived of a valuable right of an appeal which was disposed of by merely referring to the fact that there was no procedural lapse and the appellant was given fair opportunity and all the rules were followed correctly. Though this court, in normal circumstances, would remit the matter to the concerned appellate authority, to examine the matter afresh, considering the long delay viz., the period of dismissal till date, such course is not adopted and the matter requires for consideration to what extent the relief could be granted to the petitioner at least on the question relating to the quantum of punishment.

13. In this regard, it is useful to refer to the various principles of the apex Court wherein it is held that normally the Court should not interfere with the quantum of punishment; and only if the punishment is "shockingly" disproportionate to the misconduct proved and it shocked the conscience of the Court even then the Court would remit the matter to the authority and they would not substitute the said punishment. However, the Apex Court has also observed that in rare situations, the Court itself can substitute its own punishment by awarding an alternative penalty. In this connection it is useful to refer to the decisions rendered in Ranjit Thakur vs. Union of India (1987 (4) SCC 611); B.C.Chatturvedi vs. Union of India (1995 (6) SCC 749); and in Union of India vs. Ganayutham (1997 (7) SCC 463).

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14. In the light of the principles laid down in the above decisions, I am of the opinion that the quantum of punishment can be interfered with in the instant case for the following reasons:-

> 1. The petitioner has entered in to services in the year 1976 and was chargesheeted for the first time in the year 1992 relating to an irregularity in the claim of travelling allowance

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bills pertaining to a meagre amount and till such time, the petitioner has not committed any irregularity during his service.

2. A chargesheet is framed in the course of the disciplinary proceedings relating to the claim of travelling allowance bills on the ground that a complaint is given by the petitioner as against his superior officer to the effect that he has demanded a sum of Rs.15,000/- which was later on reduced to Rs.10,000/- to extend necessary help.

3. Though a finding is rendered by the disciplinary authority that the allegations are found to be frivolous, it cannot be completely brushed aside that some witnesses who have given evidence supported the case of the petitioner, though their evidence were discarded and this Court has not interfered with the ultimate findings by considering the limited scope involved under Article 226 of the Constitution.

4. The appellate authority has not rendered any finding either on various grounds urged on the memorandum of appeal or on the specific grounds raised with regard to the quantum of punishment and the appeal was disposed of in a casual manner.

5. For a charge of this nature, a major penalty of dismissal is ordered which shocks the conscience of this Court.

6. Even on earlier occasion, when the matter was heard by an another learned Judge, his Lordship observed that the petitioner cannot be awarded with such a major penalty and a punishment of stoppage of increment for a period of three years would be sufficient to meet the ends of justice, but however, the said order could not be passed and an order of compulsory retirement was ordered, which came to be recalled subsequently by order dated 8.7.2005 for the reasons as set out therein.

15. For the aforesaid reasons, the writ petition is disposed of in the following terms:

a) The writ petition is partly allowed in

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so far as the quantum of punishment is concerned, and the finding by the disciplinary authority in holding that the petitioner is guilty of charges is concerned, the said finding is confirmed.

b) The punishment inflicted upon the petitioner is set aside and the punishment of order of dismissal is modified as a stoppage of increment for a period of three years with cumulative effect.

c) The petitioner is liable to be reinstated forthwith; at any rate not later than the period of 30 days from the date of receipt of a copy of this order.

d) The petitioner is not entitled for any backwages but however, the service of the petitioner should be treated as in continuous service, which shall accrue to his future service benefits.

16. The writ petition is disposed of in the above terms. No costs.

Svn

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Director General
Railway Protection Force,
Rail Bhavan,
Rafi Ahmed Kidwai Marg,
New Delhi - 110 002.

2.The Chief Security Commissioner,
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3.The Divisional Security Commissioner,
  Railway Protection Force,
  Southern Railway,
  Moore Market Complex,
  Chennai - 600 003.

+1cc to Mr. R.Parthiban, Advocate(SR.42849)
+1cc to Mr. V.G.SureshKumar, Advocate(SR.42675)

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rvr/7.11.

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